

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
P.O. Box 146760  
Salt Lake City, Utah 84114-6760  
Telephone: 801 530-6600  
Facsimile: 801 530-6980

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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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**IN THE MATTER OF:**

**MARVIN SMITH, CRD#2461162**

**Respondent.**

**PETITION FOR ORDER  
SUSPENDING LICENSE AND  
IMPOSING A FINE**

**Docket No. SD-06-0028**

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**TO:** Marvin R. Smith  
1713 Plata Way  
Sandy, UT 84093

Pursuant to the authority of § 61-1-6 of the Utah Uniform Securities Act ("Act"), the Utah Division of Securities ("Division") hereby petitions the Director of the Division ("Director") to enter an Order, subject to the approval of the Securities Advisory Board, suspending the license of Marvin Smith ("Smith") and imposing a fine in the amount of \$10,000. In support of this petition, the Division alleges the following:

**STATEMENT OF FACTS**

1. Marvin R. Smith ("Smith"), CRD #2461162, is a broker-dealer agent licensed in Utah who has been associated with Walnut Street Securities, Inc. ("WSS"), CRD#15840, since

January 2000. Prior to that time, Smith was an agent of Princor Financial Services Corp., CRD#1137, and was licensed in Utah from February 1994 through December 1999.

2. Smith conducts business selling structured settlements through two assumed names, Summit Settlement Services, and 'Marvin Smith, Structured Settlement Services'.<sup>1</sup>
3. In January 2006, Smith retained a web page designer to create a website for his business.
4. On March 31, 2006, a division examiner performed an Internet search using Smith's name and Summit Settlement Services, which directed her to a web page hosted by the web page designer.
5. The "Home" portion of Smith's web page states:

My practice for the last 15 years has been limited to structured settlements. I specialize in the use of Variable Annuities as a component of the structured settlement to counteract the erosion of benefit values through inflation.
6. The "Services" portion of Smith's web page describes various services he offers, and includes the following:

**Prior to Settlement** ...Secure annuity proposals which provide the best cost to benefit ratio, taking into account the claimants [sic] health and current investment conditions.

**During Settlement** ...Obtain fixed or variable annuity contracts to accomplish the objectives of the structured settlement... Provide alternatives to fixed or variable annuity contracts if they are more appropriate for achieving the objectives of the settlement program.
7. The bottom of the "Services" page contains the following statement:

I am a licensed broker, and generally receive compensation for my services

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<sup>1</sup>Neither assumed name is registered with the Utah Division of Corporations, as required by Utah Code Ann. § 42-2-5.

from commissions on the sale of annuities and other investment programs. These commissions are paid by the life insurance companies providing the annuities or by the investment program sponsors. As such, my services are usually provided at no cost.

8. The web page also provides contact information for Smith, including a toll-free telephone number, fax number, and the option to send an e-mail to Smith through the web page.
9. The web page does not make any reference to WSS and does not disclose that Smith is a WSS agent.
10. The WSS Compliance Manual (“compliance manual”), dated January 1, 2006, addresses in detail the requirements of NASD Conduct Rule 2210 – Communications with the Public – and how agents can comply with the rule. The compliance manual also contains a section specifically setting forth guidelines for agents with websites.
11. The compliance manual further requires that an agent report to WSS and obtain approval for outside business activities prior to engaging in such activities. In addition, agents annually file an outside business activities questionnaire to certify that all such outside activities have been reported.
12. A Division investigation following the examiner’s review of the web page revealed the following:
  - a. From approximately January 26, 2006 to April 3, 2006, Smith’s web page appeared on the Internet and was accessible by members of the public.
  - b. The web page and its contents had not been reviewed or approved by Smith’s employing broker-dealer, WSS, or by NASD, as required by NASD Conduct Rule 2210, WSS policy, and the Act.

- c. The web page contained misrepresentations of material fact or omitted to state material facts necessary in order to make content on the web page not misleading; and
- d. Smith failed to disclose to WSS outside business activities with two corporations, Tap Room, Inc., and Tap Room II, Inc., and failed to update his Form U4, Uniform Application for Securities Industry Registration or Transfer, to accurately reflect such activities.

### **FIRST CAUSE OF ACTION**

(Securities Fraud Under § 61-1-1(2) of the Act)

- 13. Smith's web page representation concerning compensation violates Section 61-1-1(2) of the Act because it misrepresents and omits material facts about how he is paid. The web page indicates that he is paid a commission by the life insurance companies or investment program sponsors providing the annuities he sells, and further asserts that "[a]s such, my services are usually provided at no cost." These statements are untrue and misleading because Smith receives compensation based upon the completion of the transaction. The insurance company recovers those commissions from customers through deferred sales charges and higher product expenses deducted from the policy. These facts are not disclosed on the web page, and further disclosure is necessary to make Smith's representations not misleading.

### **SECOND CAUSE OF ACTION**

(Dishonest or Unethical Business Practices Under § 61-1-6(2)(g) of the Act)

- 14. Smith's web page is an "advertisement" as defined in NASD Conduct Rule 2210. Although the web page was accessible by members of the public, it was not reviewed and

approved by WSS and NASD, as required by NASD Conduct Rule 2210(b)(1) and the WSS compliance manual.

15. As discussed above, the web page did not disclose all material facts, and contained false or misleading statements, also in violation of Conduct Rule 2210(d)(1).
16. Furthermore, the web page did not disclose WSS's name or explain Smith's association with WSS, as required by Conduct Rule 2210(d)(2). Because Smith uses an assumed name, the Rule also requires that an advertisement reflect which products or services are being offered by the member. Since there is no reference to WSS, the web page fails to meet this requirement.
17. Smith's violations of NASD Conduct Rule 2210 constitute a dishonest or unethical business practice under Utah Admin. Code Rule R164-6-1g(C)(28), applicable to agents through (D)(7), which conduct warrants disciplinary sanctions under Section 61-1-6(2)(g) of the Act.

### **THIRD CAUSE OF ACTION**

(Failure to Amend Form U4 Under § 61-1-5(4))

18. The Utah Division of Corporations' records indicate Smith is an officer, director, and trustee for two corporations, Tap Room, Inc., and Tap Room II, Inc. (collectively, "Tap Room"). This information was not included in Smith's outside business activity disclosures to WSS.
19. In his most recent WSS Outside Business Activities Questionnaire, for 2005, Smith reported that he was not engaged in any outside business activities other than as disclosed, and that he was not a trustee or fiduciary. Smith further acknowledged on the

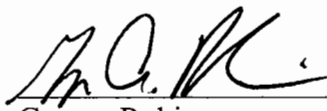
Questionnaire that he understood WSS policy requiring disclosure of outside activities as well as his obligation to update his Form U4 prior to engaging in such activities.

20. Although he became involved with the Tap Room in 2002, Smith did not amend his Form U4 at that time or subsequently to report the activity. His most recent Form U4, filed August 26, 2004, does not disclose any activity with the Tap Room.
21. Smith's Form U4 became inaccurate and incomplete in a material respect when he began the Tap Room outside business activities. His failure to amend the Form U4 to disclose the activities violates the requirement of Section 61-1-5(4) that a licensee shall "promptly file a correcting amendment" to an inaccurate or incomplete document filed with the Division.

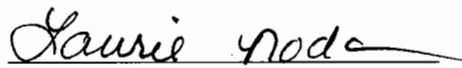
#### **REQUEST FOR RELIEF**

The Division requests that, based upon Smith's willful violations of the Act, pursuant to § 61-1-6 of the Act and subject to the approval of the Securities Advisory Board, the Director enter an order suspending the license of Smith and fining him \$10,000.

Dated this 4 day of May, 2006.

  
George Robison  
Director of Licensing

Approved:

  
Laurie L. Noda  
Assistant Attorney General

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
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**BEFORE THE DIVISION OF SECURITIES  
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**IN THE MATTER OF:**

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**Respondent.**

**NOTICE OF AGENCY ACTION**

**Docket No. SD-06-0028**

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**THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:**

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of mailing of the mailing of this Notice. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§63-46b-3 and 63-46b-6 through -11. The facts on which this action is based are set forth in the accompanying Petition.

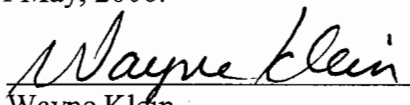
Within thirty (30) days of the mailing date of this notice, you are required to file an Answer with the Division. The Answer must include at least the information required by Utah Code § 63-46b-6(1). In addition, you are required by § 63-46b-6(3) to state: a) by paragraph, whether you admit or deny each allegation contained in the Petition, including a detailed explanation for any response other than an unqualified admission; b) any additional facts or

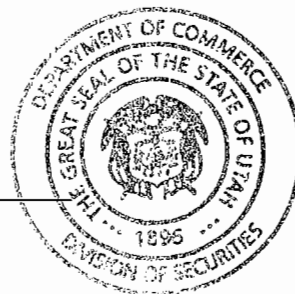
documents which you assert are relevant in light of the allegations made; and c) any affirmative defenses (including exemptions or exceptions contained within the Utah Uniform Securities Act) which you assert are applicable. To the extent that factual allegations or allegations of violations contained in the Petition are not disputed in your Answer, they will be deemed admitted.

After your Answer is filed, a hearing will be set at a date and time agreed upon by the parties. If you fail to file an Answer, as set forth herein, or fail to appear at any hearing that is set, you may be held in default in accordance with Utah Code Ann. §64-46b-11 without any further notice to you, or the hearing may proceed without your participation under § 63-46b-8.

The presiding officer in this case is Wayne Klein, Director, Division of Securities, 160 East 300 South, P.O. Box 146760, Salt Lake City, UT 84114-6760, telephone (801) 530-6600. An administrative law judge may be assigned for the hearing. At any hearing, the Division will be represented by the Utah Attorney General's Office, 160 East 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310. You may appear and be heard and present evidence on your behalf at any such hearings. You may be represented by counsel of your choice at these proceedings. You may attempt to negotiate a settlement of the matter without filing an answer or proceeding to hearing. Should you so desire, please contact the Utah Attorney General's Office. Questions regarding the Petition and Notice of Agency Action should be directed to Laurie Noda, Assistant Attorney General, 160 E. 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.

DATED this 4<sup>TH</sup> day of May, 2006.

  
Wayne Klein  
Director, Division of Securities  
Utah Department of Commerce





**Certificate of Mailing**

I certify that on the 8<sup>TH</sup> day of May, 2006, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

Marvin R. Smith  
1713 Plata Way  
Sandy, UT 84093  
Certified Mail # 70051820 0002 02595691

Donald R. Kaplan  
Vice President and Chief Compliance Officer  
Walnut Street Securities, Inc.  
13045 Tesson Ferry Road B1-50  
St. Louis, MO 63128  
Certified Mail # 70051820 0002 02595707

PAMALA RADZINSKI

Executive Secretary